

REMARKS

Claims 1-2, 4-5, 11-24, 26, and 34-37 are in the case. The allowability of Claims 10, 11, 31-34, and 41-44, if rewritten in independent form, is noted with sincere appreciation. Claims 3, 6-10, 25, 27-33, and 38-44 have been cancelled without prejudice or disclaimer.

Claim 1 has been amended to incorporate the features of Claims 8 and 10. The dependency of Claim 11 was changed due to the cancellation of Claim 10. Claim 23 has been amended to include the features of original Claim 1, from which Claim 23 depended, and the features of original Claims 31-33. The dependency of Claim 34 was changed due to the cancellation of Claim 33, and Claim 34 has been amended to incorporate the limitations of Claim 33, from which it depended. Claim 35 has been amended to incorporate the features of Claims 41-44. Entry of these amendments is solicited on the grounds that they place the case in condition for allowance or in better form for appeal.

The above amendment makes Claim 23 an independent claim, bringing the number of independent claims in the case to a total of two. As there are still fewer than three independent claims in the case, it is believed that no fees for claims are due.

The withdrawal of the §112 rejection of Claim 11 is noted with sincere appreciation. The withdrawal of the §103 rejection involving EP 0 197 616 is also noted with sincere appreciation.

Applicants assume that the §103 rejection involving Henne has been withdrawn, as it is not mentioned anywhere in the present Office Action.

Objections to the Specification

A clean copy of the first page of the Specification is submitted with this Response. The only change made on the first page of the Specification was the removal of the underlining under the title. A clean copy of the Abstract is also submitted with this Response. The Abstract will become the last page of the Specification, and thus is numbered as Page 23. No changes have been made in the text of the Abstract.

Rejection under §112, second paragraph

The rejection of Claim 3 under 35 U.S.C. 112, second paragraph will be rendered moot by the cancellation of Claim 3 if the above amendment is entered.

Rejections under §102(b)

1. *Rejection over Eichler et al.*

Claims 1-9, 12-19, 21, and 35-37 are rejected under 35 U.S.C. 102(b) as anticipated by Eichler et al. (U.S. 4,434,035). This rejection is respectfully traversed.

Upon entry of the above amendment, Claims 1-9, 12-19, 21, and 35-37 will no longer be anticipated by Eichler et al., since Claim 1 as amended incorporates the features of Claim 10, which is not rejected hereunder, and Claim 35 as amended incorporates the features of Claims 41-44, which are not rejected hereunder. Thus, reconsideration and withdrawal of this rejection is respectfully requested.

2. *Rejection over Henne et al.*

Claims 1-7, 9, 12-22, and 35-37 are rejected under 35 U.S.C. 102(b) as anticipated by Henne et al. (U.S. 4,666,952). This rejection is respectfully traversed.

Upon entry of the above amendment, Claims 1-7, 9, 12-22, and 35-37 will no longer be anticipated by Henne et al., since Claim 1 as amended incorporates the features of Claim 10, which is not rejected hereunder, and Claim 35 as amended incorporates the features of Claims 41-44, which are not rejected hereunder. Thus, reconsideration and withdrawal of this rejection is respectfully requested.

3. *Rejection over Dart et al.*

Claims 1, 3, 5-7, 9, 12-14, 17-18, 21-30, and 35-37 are rejected under 35 U.S.C. 102(b) as anticipated by Dart et al. (U.S. 4,071,424). This rejection is respectfully traversed.

Upon entry of the above amendment, Claims 1, 3, 5-7, 9, 12-14, 17-18, 21-30, and 35-37 will no longer be anticipated by Dart et al., since Claim 1 as amended incorporates the features of Claim 10, which is not rejected hereunder, Claim 23 as amended incorporates the features of Claims 31-33, which are not rejected hereunder, and Claim 35 as amended incorporates the features of Claims 41-44, which are not rejected hereunder. Thus, reconsideration and withdrawal of this rejection is respectfully requested.

Rejections under §103(a)

1. *Rejection over Eichler et al.*

Claims 1-9, 12-19, 21, and 35-37 are rejected under 35 U.S.C. 103(a) as obvious over Eichler et al. (U.S. 4,434,035). This rejection is respectfully traversed.

Upon entry of the amendment, Claims 1-9, 12-19, 21, and 35-37 will no longer be made obvious by Eichler et al., since Claim 1 as amended incorporates the features of Claim 10, which is not rejected hereunder, and Claim 35 as amended incorporates the features of Claims 41-44, which are not rejected hereunder. Thus, reconsideration and withdrawal of this rejection is respectfully requested.

2. *Rejection over Dart et al.*

Claims 1, 3, 5-7, 9, 12-14, 17-18, 21-30, and 35-37 are rejected under 35 U.S.C. 103(a) as obvious over Dart et al. (U.S. 4,071,424). This rejection is respectfully traversed.

Upon entry of the amendment, Claims 1, 3, 5-7, 9, 12-14, 17-18, 21-30, and 35-37 will no longer be anticipated by Dart et al., since Claim 1 as amended incorporates the features of Claim 10, which is not rejected hereunder, Claim 23 as amended incorporates the features of Claims 31-33, which are not rejected hereunder, and Claim 35 as amended incorporates the features of Claims 41-44, which are not rejected hereunder. Thus, reconsideration and withdrawal of this rejection is respectfully requested.

Obviousness type non-statutory double-patenting rejection

Claims 1-44 are rejected under the judicially-created doctrine of obviousness type non-statutory double-patenting over Claim 1-24 of U.S. Application No. 11/210,712. Applicants respectfully object to this rejection on the grounds that Application No. 11/210,712 stands abandoned, effective December 28, 2006. Thus, it is respectfully submitted that this rejection is moot and should be withdrawn, at least until such time as Application No. 11/210,712 is revived from abandonment.

Prematurity of Finality

The only indication of finality in the present Office Action is that box 2a on Page 1 of the instant Action is checked. No reason for the finality is provided in the Action. It is believed that the finality of the present Office Action is premature. Applicants are aware of the policy in M.P.E.P. §706.07(a), which says in relevant part

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement.

No information disclosure statement has been filed in this case since the issuance of the previous Office Action. The only amendments to the claims made in Response to the previous Office Action were in Claims 11 and 45. It is submitted that those amendments were not of such a nature as to necessitate a new ground of rejection, nor did the amendments include subject matter which was not claimed at the time the previous Office Action was issued.

Regarding the timeliness of a final rejection, M.P.E.P. §706.07 states that

To bring the prosecution to as speedy conclusion as possible and at the same time to deal justly by both the applicant and the public, the invention as disclosed and claimed should be thoroughly searched in the first action *and the references fully applied.* (Emphasis added.)

On Page 2 of the present Office Action, the Examiner states that "New grounds of rejection under 35 U.S.C. §102(b) are set forth herein." In fact, all three §102(b) rejections in the present Office Action are new; there were no §102 rejections in the previous Action. In addition, a new ground of rejection under §103(a) is presented for the first time in the present Office Action.

Furthermore, all of the rejections made in the present Office Action cite references which were cited in the previous Action. Of particular note is the Eichler et al. reference, which was mentioned in the previous Action but not applied against the claims. Thus, the Examiner was aware of all of the presently-applied references at the time the previous Office Action was issued, and all of these rejections could have been made in the previous Office Action.

In view of the foregoing, it is believed that the case is in condition for allowance, and prompt notification to this effect is respectfully solicited. If the Examiner feels otherwise, Applicants respectfully request the withdrawal of the finality of the rejections in this Office Action so that Applicants can have an opportunity to respond to any remaining objections or rejections.

If any matters remain in requiring further consideration, the Examiner is respectfully requested to telephone the undersigned so that such matters can be discussed, and if possible, promptly resolved.

Please continue to address all correspondence in this Application to Mr. Edgar E. Spielman, Jr. at the address of record.

Respectfully submitted,

/ Mary H. Drabnis /

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